*__The Hon'ble Sri Justice L.Narasimha Reddy__

+ Writ Petition No.1842 of 2005

% 23-02-2005

Pathuri Venkateswarlu

… Petitioner

The Government of A.P., rep.by Secretary, Law (Legal Affairs) Department, Secretariat, Hyderabad and three others.

…Respondents

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>HEAD NOTE:

! Counsel for the Petitioner: Mr M.Ramaiah

^Counsel for respondents 1 to 3: G.P. for Home.

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 1842 of 2005

Between:

Pathuri Venkateswarlu S/o Kotaiah
R/o 19th Cross Roads, Brodipet, Guntur

..... PETITIONER

AND

1 The Government of Andhra Pradesh, rep by Secretary, Law (Legal Affairs) Department, Secretariat, Hyderabad.
2 The Collector & District Magistrate, Guntur Guntur District.
3 The Director of Prosecutions, Hyderabad.
4 Sri T. Devadas, Senior Assistant, Public Prosecutor, Grade-1, Administration Munsif Magistrate court-4, Guntur.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the impugned proceedings Rc. No. 1056/2004-C2, dated 8-10-2004 issued by the 2nd respondent herein as wholly illegal, ultravires, without jurisdiction and opposed to the principles of natural justice and to pass such other order or orders as are deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.M.RAMAIAH

Counsel for Respondents 1 to 3: GP FOR HOME

Counsel for Respondent No.4: --

The Court at the stage of admission made the following ORDER:

The petitioner was appointed as a Public Prosecutor for the Court of the District and Sessions Judge, Guntur, through G.O.Rt.No.917 Law (L.A.&J Courts-A-3) Department, dated 22-06-2001. Even after expiry of the term, he is continuing in the office, in view of the Clause contained in the order of appointment. Through his proceedings dated 08-10-2004, the District Collector, the second respondent, terminated the service of the petitioner under Rule 9 of the A.P. Law Officers (Appointment and Conditions of Service) Instructions, 2000 (for short 'Instructions'). The petitioner challenges the same. According to him, the appointing authority for the post of the Public Prosecutor, is the first respondent and the second respondent has no jurisdiction to terminate the said appointment.

Heard the learned counsel for the petitioner and the learned Government Pleader for Home.

Initially, the petitioner was appointed as the Public Prosecutor for the Court of the District & Sessions Judge, Guntur for a period of three years, by the first respondent, through the orders in G.O.Ms.No.16 dated 16-01-1997. Thereafter, he was appointed for another term of three years through G.O.Rt.No.917 dated 22-06-2001. If the appointment was for three years and the G.O. is silent as to the consequences that are to follow after expiry of the said period, the petitioner cannot claim any right to remain in the office, after expiry of three years.

The notification issued through the said G.O. reads as under:

> "If, by the time of expiry of the said term of three years, no appointment of a successor to the said post is made by the Government, the said Prosecutor shall continue to function as such Prosecutor till a successor so appointed assumes office".

In view of this stipulation, the petitioner is entitled to continue in the office till a successor is appointed in his place and assumes charge. It is not the case of the respondents that any successor has been appointed in place of the petitioner.

The second respondent issued order dated 08-10-2004 terminating the service of the petitioner as well as that of certain other Additional Public Prosecutors in the

District. He has referred to Rule 9 of the Instructions. The Instructions relied upon by the second respondent deal with the service conditions of the Law Officers. The appointment of a Public Prosecutor is governed by Section 24 Cr.P.C. and the first respondent is the appointing authority. When the order of appointment clearly directs that the petitioner shall remain in office even after expiry of the term of three years till his successor assumes the office, the second respondent cannot vary the terms on the strength of an administrative instruction. If at all anyone, it is only the first respondent that could have appointed a successor in place of the petitioner or at least modified the Clause contained in G.O.Rt.No.917, dated 22-06-2001. In that view of the matter, the action taken by the second respondent in terminating the service of the petitioner cannot be sustained.

Hence, the impugned order, in so far as it relates to the petitioner is set aside. This order, however, does not preclude the first respondent from taking appropriate measures in appointing a successor to the petitioner.

The writ petition is accordingly allowed. No order as to costs.

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23-02-2005

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To

1 The Government of Andhra Pradesh, rep by Secretary, Law (Legal Affairs) Department, Secretariat, Hyderabad.
2 The Collector & District Magistrate, Guntur, Guntur District.
3 The Director of Prosecution, Hyderabad.
4 Two C.Cs. to the Government Pleader for Home, High Court of A.P., Hyderabad, (OUT).

5 Two C.D. Copies.

***The Hon'ble Ms Justice G.ROHINI**

+ Writ Petition No.15955 of 2004

% 03-11-2004

B.H.E.L. (R&D) Employees' Cooperative Housing Society Limited, Hyderabad, rep.by its President Sri C.N.Srinivasan.

… Petitioner

The Cooperative Tribunal, Hyderabad and others

…Respondents

<GIST

>HEAD NOTE:

! Counsel for the Petitioner: Sri M.V.Durga Prasad

^Counsel for Respondents 1 & 2: GP FOR COOPERATION

Counsel for Respondents 3 to 8: -----

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1. AIR 1967 SC 799
2. 1972 1&2 APLJ 343